UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

ROBERTS TECHNOLOGY GROUP, INC. Plaintiff v. CURWOOD, INC. Defendant.	CIVIL ACTION NO. 14-5677

DEFENDANT, CURWOOD, INC.'S PROPOSED JURY INSTRUCTIONS ON SUBSTANTIVE ISSUES

Pursuant to Paragraph 4 of the Court's April 1, 2016 Order (Doc. No. 157), Defendant, Curwood, Inc. ("Curwood"), respectfully requests that the Court charge the jury in the above-captioned action with the following substantive instructions. Defendant reserves the right to amend, alter and/or modify these instructions up to and through the time of trial, to the extent permitted by the Court.

Respectfully submitted,

COZEN O'CONNOR

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Proposed Jury Instruction

1. Breach of Contract Established

Your role as jurors in this case is only to determine what damages, if any, Plaintiff has suffered arising from the Defendant's breach of its agreement with the Plaintiff. I am instructing you that it has previously been established that a contract existed between the parties and that the Defendant breached that contract. Your role is to determine the damages, if any, that arise from that breach.

Source: Order of Jan. 27, 2016, Doc. No. 135, ¶¶ 1-2.

Proposed Jury Instruction

2. Damages—Lost Profits

Plaintiff's claimed damages in this case are for lost net profits attributable to a breach of contract. Damages for lost net profits, like other contract damages, may not be awarded when the evidence fails to offer any guideposts except the plaintiff's own speculation. In order to award damages for lost profits, you must find that there is specific evidence that allows you to make a reasonably certain estimate of the amount of lost profits due to the breach. Damages that are speculative or have not been proven with reasonable certainty may not be awarded.

Sources: Pennsylvania Suggested Standard Civil Jury Instructions (4th ed. 2015), Vol. II, Ch. 19, Section 19.260-19.270; Merion Spring Co. v. Muelles Knos. Garcia Torres, S.A., 462 A.2d 686, 696-96 (Pa. Super. 1983); Commonwealth Trust Co. v. Hachmeister Lind Co., 181 A. 787, 789-90 (Pa. 1935).

Proposed Jury Instruction

3. Lost Net Profits

Plaintiff is only entitled to recover lost net profits. Plaintiff is not entitled to recover lost gross profits as damages. Net profits are defined as gross revenue less any and all costs, both fixed and variable, pegged to the number of units sold. Any award of lost profits damages must account for the costs Plaintiff avoided when it stopped selling or marketing CPET trays under its agreement with the Defendant. If lost net profits have not been proven by the Plaintiff with reasonable certainty, you are not to award lost profit damages.

Source: Deaktor v. Fox Grocery Co., 475 F.2d 1112, 1116 (3d Cir.), cert. denied, 414 U.S. 867 (1973); Tunis Bros. Co. v. Ford Motor Co., 952 F.2d 715, 735-36 (3d Cir. 1991); Power Restoration Int'l Inc. v. PepsiCo Inc., No. 12-1922, 2015 WL 1208128, at *4 (E.D. Pa. Mar. 17, 2015).

Proposed Jury Instruction

4. Damages—Lost Profits for Terminable-at-will Contract

Damages for lost profits are not recoverable for contracts that are terminable-at-will. Accordingly, if you find that the contract between Roberts Technology Group and Curwood was terminable at will, you should not award lost profits damages for any breach of contract.

Sources: Mass. Bonding & Ins. Co. v. Johnston & Harder, 35 A.2d 721, 724 (Pa. 1943); Jasco Aluminum Products Corp. v. Penn Aluminum Sash & Door Co., 9 Pa. D. & C.2d 185, 186 (Pa. C. P. 1956)

Proposed Jury Instruction

5. Mitigation of Damages

The law requires a plaintiff who has suffered damages to take all reasonable steps to minimize or "mitigate" those damages by taking advantage of any reasonable opportunity the plaintiff may have had under the circumstances to reduce or minimize the loss or damage. The Defendant has the burden to prove the Plaintiff's failure in this regard. If you believe that Defendant has proven that Plaintiff could have taken steps to mitigate its damages and did not do so, then you must not award damages for harm that could have been avoided. A plaintiff is not entitled to recover damages for any harm that it could have avoided by the use of reasonable effort or expenditure.

In this case, if you find that RTG failed to seek out or take advantage of a business opportunity that was reasonably available under all the circumstances shown by the evidence, then you should reduce the amount of damages by the amount that could have been reasonably realized if RTG had taken advantage of such opportunity.

Source: Fed. Jury Practice and Instructions §86.08; Pennsylvania Suggested Standard Civil Jury Instructions, 6.06 (2005).

CERTIFICATION OF SERVICE

I hereby certify that on April 28, 2016, I served a copy of the forgoing *Curwood, Inc.'s Proposed Jury Instructions* upon the following via the Court's electronic filing system:

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